IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5246 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JITENDRASINH ALIAS BAKO JITU RAJJUJI CHAVDA

Versus

THE COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 5246 of 2002

MS BANNA S DUTTA for Petitioner No. 1

MR HH PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 23/07/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of detention dated 12.12.2001 passed against him by the

Commissioner of Police, Ahmedabad City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act). The petitioner was branded as "bootlegger" within the meaning of Section 2(b) of the PASA Act. The order of detention came to be passed on 12.12.2001, but the same has been executed on 29.4.2002 i.e. approximately after a period of five months.

2. The subjective satisfaction recorded by the detaining authority is on account of the papers supplied by the sponsoring machinery and the bunch of papers supplied to the detenu with grounds of detention reveals that the petitioner was found involved in three different offences punishable under the Bombay Prohibition Act. In the first offence being DCB Ahmedabad City Police Station Prohi.CR No. 5005/2000 registered on 20.7.2002, prohibited liquor worth Rs. 2500/ in 15 bottles was recovered. In the second offence being Amraiwadi Prohi.CR No. 5259/2001 registered on 6.8.2001, prohibited liquor worth Rs. 7700/ in 52 bottles was recovered. Similarly, in the third offence being Prohibition Station (North) CR.No. 3825/2001 registered on 5.12.2001, prohibited liquor and beer worth Rs. 39,100/ in 137 bottles was recovered and seized. It is mentioned in the grounds of detention Page 23 that investigating agency was not able to arrest the petitioner for the offence registered on 5.12.2001 viz. CR No. 3825/2001 as he was absconding and was arrested on 29.4.2002- the day on which the order of detention was executed. Statements of two independent and un-named witnesses are also recorded by the sponsoring authority and were placed before the detaining authority. Both the statements are of 7.12.2001 and 6.12.2001 and the detaining authority verified the statements of both the witnesses on 10.12.2001. These bootlegging activities of the petitioner being prejudicial to the maintenance of the public order, the order of preventive detention under challenge has been passed.

3. Legality and validity of the order of detention is challenged on number of grounds. however, the ld. counsel appearing for the petitioner Ms. Banna Datta has concentrated her arguments only on one ground that the written representation was made by the detenu on 9.5.2002 through jail and the same was forwarded to the authorities concerned. This written representation was required to be responded promptly, but the petitioner received the communication for the first time on 27.5.2002 through jail authorities. Intimation received

by the detenu dated 23.5.2002 sent by the detaining authority is tendered during the oral submissions and the same is taken on record. Plain reading of the communication received by the detenu clearly shows that the written representation dated 9.5.2002 was received by concerned Branch of the office of the Police Commissioner, Ahmedabad City for the first time on 21.5.2002 and by that time the order of detention was already approved and the case was also scrutinised by the PASA Advisory Board.

4. After perusal of the papers available with the ld. AGP and in response to the query raised by the Court, ld. AGP Mr. H.H.Patel has fairly accepted that through oversight, written representation made by the detenu addressed to the detaining authority on 9.5.2002, was erroneously sent to the office of the Police Commissioner, Surat City and Police Commissioner, Surat City in turn sent the same to the Police Commissioner, Ahmedabad City and so delay is caused. This error committed by the government machinery has resulted into serious prejudice in getting response and to make further effective representation for revocation of the order of detention before the case could be scrutinised by the PASA Advisory Board. Thus delay in dealing with the representation has caused in the present case, itself is sufficient for quashing and setting aside the order of detention as the same goes to the root of the validity and legality of the continuation of detention and, therefore, continued detention of the detenu is also bad. Since this petition requires to be allowed on the sole ground of delay in dealing with representation effecting right of the petitioner to make effective representation flowing from Article 22(5) of the Constitution of India, it is not necessary to deal with other points raised in the petition.

5. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 12.12.2001 passed by Commissioner of Police, Ahmedabad City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.
Direct Service is permitted.

23-7-2002 [C. K.BUCH, J]
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